

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
IN AND FOR MANATEE COUNTY, FLORIDA

KEN BURTON, JR., MANATEE COUNTY  
TAX COLLECTOR,  
Plaintiff,

vs.

CASE NUMBER: 2018-CA-001917

AIRBNB, INC., a Delaware Corporation  
AIRBNB PAYMENTS, INC., a Delaware  
Corporation  
Defendants.

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**ORDER ON DEFENDANT'S MOTION TO DISMISS**

THIS CAUSE having come on for hearing pursuant to the Defendant's Amended Motion to Dismiss, said motion having been filed on March 18, 2019, and the Court having reviewed said motion, as well as the Plaintiff's Response in Opposition to Defendant's Motion to Dismiss, said response having been filed on September 13, 2019, and having considered the argument of counsel at the hearing in this cause, and the case law provided, and being otherwise fully advised in the premises, it is hereby:

ORDERED AND ADJUDGED that, pursuant to *Alachua County vs. Expedia, Inc.*, 175 So. 3d 730 (2015), and *Alachua County vs Expedia*, 110 So. 3d 941 (First DCA 2013), the Defendant's to Dismiss is well taken and is GRANTED. As was indicated in Judge James Nutt's January 23, 2019 ruling in *Anne Gannon, as Palm Beach County Tax Collector vs. AirB&B, HomeAway, TripAdvisor, et al*, Palm Beach Circuit Court Case number 2014CA428, the Defendant here is simply a conduit through which a vacationer can book a reservation and stay at a homeowner's property. The Defendant is not in the business of renting, leasing or granting licenses to use transient accommodations and does not grant possessory or use rights in the properties, as contemplated by the Tourist Development Tax enabling statute or Manatee County's ordinance. As indicated in Judge James Nutt's ruling, there is no question that the Defendant's services are comprehensive. However, as Judge Nutt also stated, the Defendant does not exercise the taxable rental privilege any more than a credit card company or other payment processor would, and its receipt of the vacationer's payment does not amount to the collection of rent, but rather to compensate them for their on-line services. Ultimately, it is the property owner who "collects" the rent and is, therefore, obligated to remit the TDT.

As an aside, this Court opines that if, indeed, it is the obligation of the Defendant, and other similar on-line companies, who provide a service to those homeowners who seek to rent their properties via the internet, it is the Legislature that is obligated to make that determination,

not the courts. Said another way, if the Defendant here, as a provider of support services to property owners who choose to rent their homes and who pass the funds along to said homeowner, is a “dealer” for purposes of the statute, the Legislature, in this Court’s opinion, will have to make that call.

Finally, this Court is cognizant of the fact that when considering a motion to dismiss, a trial court is limited to consideration of the allegations contained within the four corners of the complaint and all reasonable inferences therefrom must be construed in favor of the non-moving party. The complaint in this cause is, indeed, well pled. It does not, however, based upon the above, state a claim upon which relief can be granted.

DONE AND ORDERED in Chambers in Manatee County, Florida on this 22<sup>nd</sup> day of October 2019.

  
EDWARD NICHOLAS, CIRCUIT COURT JUDGE

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